

BINGHAM MCCUTCHEN LLP  
DONN P. PICKETT (SBN 72257)  
GEOFFREY M. HOWARD (SBN 157468)  
HOLLY A. HOUSE (SBN 136045)  
ZACHARY J. ALINDER (SBN 209009)  
BREE HANN (SBN 215695)  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
Telephone: 415.393.2000  
Facsimile: 415.393.2286  
donn.pickett@bingham.com  
geoff.howard@bingham.com  
holly.house@bingham.com  
zachary.alinder@bingham.com  
bree.hann@bingham.com

DORIAN DALEY (SBN 129049)  
JENNIFER GLOSS (SBN 154227)  
500 Oracle Parkway, M/S 5op7  
Redwood City, CA 94070  
Telephone: 650.506.4846  
Facsimile: 650.506.7114  
dorian.daley@oracle.com  
jennifer.gloss@oracle.com

Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International Corporation, and  
Oracle EMEA Limited

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE USA, INC. *et al*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

No. 07-CV-01658 PJH (EDL)

**[PROPOSED] ORDER GRANTING  
IN PART AND DENYING IN PART  
PLAINTIFFS' MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS RELATED TO  
DAMAGES MODEL AND  
INTERROGATORY RESPONSES  
RELATED TO USE OF  
PLAINTIFFS' INTELLECTUAL  
PROPERTY**

1 After considering the pleadings and memoranda submitted by the Parties and supporting  
2 papers, and having heard the arguments of counsel, IT IS HEREBY ORDERED that Plaintiffs'  
3 Motion to Compel Production of Documents Related to Damages Model and Interrogatory  
4 Responses Related to Use of Plaintiffs' Intellectual Property in the above-named action is  
5 GRANTED in part and DENIED in part as follows:

6 1. Within 21 days of the date of this Order, Defendants shall provide a  
7 supplemental response to Interrogatory No. 13 from Oracle Corporation's First Set of  
8 Interrogatories to Defendant TomorrowNow, Inc. ("Interrogatory 13"). The supplemental  
9 response shall include a detailed explanation (*e.g.*, including a download's product line, file  
10 identifier, customer credential used, or any other similar information), to the extent Defendants'  
11 records and memories allow, of the process Defendants employed and factual conclusions  
12 Defendants made that resulted in Defendants' answer to paragraph 15 of Oracle's First Amended  
13 Complaint, D.I. 36 ("FAC Answer") on July 2, 2007 and Defendants' representatives' statements  
14 in press releases/news conferences on July 2-3, 2007 that "inappropriate downloads" took place.  
15 Subject to the limits of Defendants' records and memories, the supplemental response shall be  
16 provided in a manner and contain information consistent with the direction the Court provided to  
17 Defendants' counsel during the hearing, including the bases on which Defendants concluded that  
18 "on some occasions, materials have been downloaded beyond those that, according to TN's  
19 records, related to applications licensed to the particular customer on whose behalf the  
20 downloads were made" and any other factual conclusions resulting from Defendants' analyses of  
21 any and all downloads relating to Defendants' answer to paragraph 15 of the FAC or  
22 Defendants' representatives' statements in press releases/news conferences on July 2-3, 2007  
23 that "inappropriate downloads" took place. To the extent possible, the supplemental response  
24 shall refer by Bates number and/or specific native data location to any customer contracts,  
25 download verification forms, and/or other non-privileged documents relied upon in forming  
26 Defendants' factual conclusions and analyses described above. Defendants' supplemental  
27 response to Interrogatory No. 13 shall not be construed as a waiver of either the attorney-client  
28 privilege or work product immunity.

2. Within 30 days of the date of this Order, Defendants shall provide a supplemental response to Interrogatory No. 14 from Oracle USA, Inc.'s Second Set of Interrogatories to Defendant TomorrowNow, Inc. ("Interrogatory 14"), as to fixes associated with the following Master Fix IDs selected by Oracle: for PeopleSoft, CSS-TN-0112069292, TN-AP06OCT, CSS-TN-0103076718, 2005B-751C, and CSS-TN-0114089315, and for JD Edwards, 1101064011, 1010067551, 1012062843, 1122054572, and 1015079561. Interrogatory 14 asks Defendants to "Identify all Customers who received support based on the Use of [TomorrowNow's local] environment[s], and [to provide] a detailed description of that support." To the extent possible, for each of the Master Fix IDs listed above, Defendants shall list each customer that received support in the form of a fix, bundle, or other deliverable that flowed from that Master Fix ID. To the extent possible, for each Master Fix ID listed above, Defendants shall (1) identify every environment used during, or associated with, each point in the fix-delivery process (including, for PeopleSoft HRMS Master Fix IDs, replication, development, unit testing, individual fix testing, bundling, and bundle testing, as applicable, and for other PeopleSoft Master Fix IDs and JDE Master Fix IDs, any equivalent, analagous, or different points), (2) state how each identified environment was used, and (3) identify the source of the information regarding each environment used. Where Defendants lack information regarding which environments, if any, were used in the fix delivery process for a particular Master Fix, Defendants shall state that they have no information at this time and that they have made a reasonable search for such information. Defendants' supplemental response shall refer by Bates number and/or specific native data location to each non-privileged document relied upon in supplementing their response, and if Defendants rely on any non-privileged documents or data not previously produced by any party in this case, then such documents or data must be produced with the response. Defendants will provide a separate supplemental response to Interrogatory 14, denoted as a response to Interrogatory 14(a), which describes the process, amount of time used, and expense incurred in preparing the supplemental response and identifies the consultants and former employees who assisted in creating the response to Interrogatory 14. Defendants'

1 supplemental response to Interrogatory 14 and response to Interrogatory 14(a) shall not be  
2 construed as a waiver of either the attorney-client privilege or work product immunity.

3 3. The portions of Plaintiffs' Motion to Compel relating to licenses, valuations, sales  
4 close rates, and support renewal rates have been mooted by agreement of the Parties.

5  
6 As to all issues for which relief is not specifically granted by paragraphs 1 and 2 above or  
7 mooted by paragraph 3 above, the Court DENIES the relief requested in Plaintiffs' motion  
8 without prejudice.

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10  
11 IT IS SO ORDERED.

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14 DATED: August 31, 2009

